

## Trade Agreements Act of 1979 (19 U.S.C. 2531-2573), P.L. 96-39

### **Sec. 2531. Certain standards-related activities**

(a) No bar to engaging in standards activity Nothing in this subchapter may be construed - (1) to prohibit a Federal agency from engaging in activity related to standards-related measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment, or consumers; or (2) to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment, or consumers. (b) Unnecessary Obstacles Nothing in this subchapter may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

### **Sec. 2532. Federal standards-related activities**

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements: (1) Nondiscriminatory treatment Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products, including, but not limited to, when applying tests or test methods, no less favorable treatment with respect to - (A) the acceptance of the product for testing in comparable situations; (B) the administration of the tests in comparable situations; (C) the fees charged for tests; (D) the release of test results to the exporter, importer, or agents; (E) the siting of testing facilities and the selection of samples for testing; and (F) the treatment of confidential information pertaining to the product. (2) Use of international standards (A) In general Except as provided in subparagraph (B)(ii), each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards. (B) Application of requirement For purposes of this paragraph, the following apply: (i) International standards not appropriate The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following: (I) National security requirements. (II) The prevention of deceptive practices. (III) The protection of human health or safety, animal or plant life or health, or the environment. (IV) Fundamental climatic or other geographical factors. (V) Fundamental technological problems. (ii) Regional standards In developing standards, a Federal agency may, but is not required to, take into consideration any international standard promulgated by an international standards organization the membership of which is described in section 2571(6)(A)(ii) [1] of this title. (3) Performance criteria Each Federal agency shall, if appropriate, develop standards based on performance criteria, such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to the physical form of the product or the types of material of which the product is made.

(4) Access for foreign suppliers Each Federal agency shall, with respect to any conformity assessment procedure used by it, permit access for obtaining an assessment of conformity and the mark of the system, if any, to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or other foreign origin. Footnotes [1] See References in Text note below.

#### **Sec. 2533. State and private standards-related activities**

(a) In general It is the sense of the Congress that no State agency and no private person should engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States. (b) Presidential action The President shall take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies under section 2532 of this title, and of procedures that provide for notification, participation, and publication with respect to such activities.

#### **Sec. 2541. Functions of Trade Representative**

(a) In general The Trade Representative shall coordinate the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this subchapter. (b) Negotiating functions The Trade Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standards-related activities. In carrying out this responsibility, the Trade Representative shall inform and consult with any Federal agency having expertise in the matters under discussion and negotiation. (c) Cross reference For provisions of law regarding general authority of the Trade Representative with respect to trade agreements, see section 2171 of this title.

#### **Sec. 2542. Establishment and operation of technical offices**

(a) Establishment (1) For nonagricultural products The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) of this section with respect to nonagricultural products. (2) For agricultural products The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) of this section with respect to agricultural products. (b) Functions of offices The President shall prescribe for each technical office established under subsection (a) of this section such functions as the President deems necessary or appropriate to implement this subchapter.

#### **Sec. 2543. Representation of United States interests before international standards organizations**

(a) Oversight and consultation The Secretary concerned shall - (1) inform, and consult and coordinate with, the Trade Representative with respect to international standards-related activities identified under paragraph (2); (2) keep adequately informed regarding international standards-related activities and identify those that may substantially affect the commerce of the United States; and (3) carry out such functions as are required under subsections (b) and (c) of this section. (b) Representation of United States interests by private persons (1) Definitions For purposes of this subsection - (A) Organization member The term 'organization member' means the private person who holds membership in a private international standards organization. (B)

Private international standards organization. The term 'private international standards organization' means any international standards organization before which the interests of the United States are represented by a private person who is officially recognized by that organization for such purpose. (2) In general Except as otherwise provided for in this subsection, the representation of United States interests before any private international standards organization shall be carried out by the organization member. (3) Inadequate representation If the Secretary concerned, after inquiry instituted on his own motion or at the request of any private person, Federal agency, or State agency having an interest therein, has reason to believe that the participation by the organization member in the proceedings of a private international standards organization will not result in the adequate representation of United States interests that are, or may be, affected by the activities of such organization (particularly with regard to the potential impact of any such activity on the international trade of the United States), the Secretary concerned shall immediately notify the organization member concerned. During any such inquiry, the Secretary concerned may solicit and consider the advice of the appropriate representatives referred to in section 2547 of this title. (4) Action by organization member. If within the 90-day period after the date on which notification is received under paragraph (3) (or such shorter period as the Secretary concerned determines to be necessary in extraordinary circumstances), the organization member demonstrates to the Secretary concerned its willingness and ability to represent adequately United States interests before the private international standards organization, the Secretary concerned shall take no further action under this subsection. (5) Action by Secretary concerned If - (A) within the appropriate period referred to in paragraph (4), the organization member does not respond to the Secretary concerned with respect to the notification, or does respond but does not demonstrate to the Secretary concerned the requisite willingness and ability to represent adequately United States interests; or (B) there is no organization member of the private international standards organization; the Secretary concerned shall make appropriate arrangements to provide for the adequate representation of United States interests. In cases where subparagraph (A) applies, such provision shall be made by the Secretary concerned through the appropriate organization member if the private international standards organization involved requires representation by that member. (c) Representation of United States interests by Federal agencies With respect to any international standards organization before which the interests of the United States are represented by one or more Federal agencies that are officially recognized by that organization for such purpose, the Secretary concerned shall - (1) encourage cooperation among interested Federal agencies with a view toward facilitating the development of a uniform position with respect to the technical activities with which the organization is concerned; (2) encourage such Federal agencies to seek information from, and to cooperate with, the affected domestic interests when undertaking such representation; and (3) not preempt the responsibilities of any Federal agency that has jurisdiction with respect to the activities undertaken by such organization, unless requested to do so by such agency.

#### **Sec. 2544. Standards information center**

(a) Establishment The Secretary of Commerce shall maintain within the Department of Commerce a standards information center. (b) Functions The standards information center shall - (1) serve as the central national collection facility for information relating to (A) standards, technical regulations, conformity assessment procedures, and standards-related activities, whether such standards, technical regulations, conformity assessment procedures, or activities are public or private, domestic or foreign, or international, regional, national, or local and (B) the

membership and participation of Federal, State, or local government bodies or private bodies in the United States in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements concerning standards-related activities; (2) make available to the public at such reasonable fee as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) other than information to which paragraph (3) applies; (3) use its best efforts to make available to the public, at such reasonable fees as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) that is of private origin, on a cooperative basis with the private individual or entity, foreign or domestic, who holds the copyright on the information; (4) in case of such information that is of foreign origin, provide, at such reasonable fee as the Secretary shall prescribe, such translation services as may be necessary; (5) serve as the inquiry point for requests for information regarding standards-related activities, whether adopted or proposed, within the United States, except that in carrying out this paragraph, the Secretary of Commerce shall refer all inquiries regarding agricultural products to the technical office established under section 2542(a)(2) of this title within the Department of Agriculture; and (6) provide such other services as may be appropriate, including but not limited to, such services to the technical offices established under section 2542 of this title as maybe requested by those offices in carrying out their functions. (c) Sanitary and phytosanitary measures (1) Public information The standards information center shall, in addition to the functions specified under subsection (b) of this section, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding - (A) any sanitary or phytosanitary measure of general application, including any inspection procedure or approval procedure proposed, adopted, or maintained by a Federal agency or agency of a State or local government; (B) the procedures of a Federal agency or an agency of a State or local government for risk assessment and factors the agency considers in conducting the assessment; (C) the determination of the levels of protection that a Federal agency or an agency of a State or local government considers appropriate; and (D) the membership and participation of the Federal Government and State and local governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements. (2) Definitions The definitions in section 2575b of this title apply for purposes of this subsection.

#### **Sec. 2545. Contracts and grants**

(a) In general For purposes of carrying out this subchapter, and otherwise encouraging compliance with the Agreement, the Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this subchapter, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities - (1) to increase awareness of proposed and adopted standards-related activities; (2) to facilitate international trade through the appropriate international and domestic standards-related activities; (3) to provide, if appropriate, and pursuant to section 2543 of this title, adequate United States representation in international standards-related activities; and (4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports. No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts. (b) Terms and conditions Any contract

entered into, or any grant made, under subsection (a) of this section shall be subject to such terms and conditions as the Trade Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. (c) Limitations Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the Trade Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned. (d) Audit Each recipient of a grant or contract under this section shall make available to the Trade Representative or the Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under such grant or contract.

#### **Sec. 2546. Technical assistance**

The Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this subchapter, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this subchapter.

#### **Sec. 2547. Consultations with representatives of domestic interests**

In carrying out the functions for which responsible under this subchapter, the Trade Representative and the Secretary concerned shall solicit technical and policy advice from the committees, established under section 2155 of this title, that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

#### **Sec. 2551. Right of action**

Except as provided under this subpart, the provisions of this part do not create any right of action under the laws of the United States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

#### **Sec. 2552. Representations**

Any - (1) Party to the Agreement; or (2) foreign country that is not a Party to the Agreement but is found by the Trade Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement; may make a representation to the Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the Trade Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

#### **Sec. 2553. Action after receipt of representations**

(a) Review Upon receipt of any representation made under section 2552 of this title, the Trade Representative shall review the issues concerned in consultation with - (1) the agency or person

alleged to be engaging in violations under the Agreement; (2) the member agencies of the interagency trade organization established under section 1872(a) of this title; (3) other appropriate Federal agencies; and (4) appropriate representatives referred to in section 2547 of this title.(b) Resolution The Trade Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

#### **Sec. 2554. Procedure after finding by international forum**

(a) In general If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 1872(a) of this title shall review the finding and the matters related thereto with a view to recommending appropriate action.(b) Cross reference For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement(other than the United States) violate the obligations of the Agreement, see section 2411 of this title.

#### **Sec. 2561. Findings of reciprocity required in administrative proceedings**

(a) In general Except as provided under subpart 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in within the United States and is covered by the Agreement, unless the Trade Representative finds, and informs the agency concerned in writing, that - (1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 2552(2) of this title; and (2) the dispute settlement procedures provided under the Agreement are not appropriate. (b) Exemptions This section does not apply with respect to causes of action arising under - (1) the antitrust laws as defined in section 12(a) of title 15; or (2) statutes administered by the Secretary of Agriculture. This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or repeal of a rule.

#### **Sec. 2562. Consideration of standards-related activities by an international forum**

No standards-related activity being engaged in within the United States maybe stayed in any judicial or administrative proceeding on the basis that such activity is currently being considered, pursuant to the Agreement, by an international forum.

#### **Sec. 2571. Definitions**

As used in this subchapter - (1) Agreement The term 'Agreement' means the Agreement on Technical Barriers to Trade referred to in section 3511(d)(5) of this title. (2) Conformity assessment procedure The term 'conformity assessment procedure' means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. (3)Federal agency The term 'Federal agency' means any of the following within the meaning of chapter 2 of part I of title 5: (A) Any executive department.(B) Any military department. (C) Any Government corporation. (D) Any Government-controlled corporation. (E) Any independent establishment. (4) International conformity assessment procedure The term 'international conformity assessment procedure' means a conformity

assessment procedure that is adopted by an international standards organization. (5) International standard The term 'international standard' means any standard that is promulgated by an international standards organization. (6) International standards organization The term 'international standards organization' means any organization - (A) the membership of which is open to representatives, whether public or private, of the United States and at least all Members; and (B) that is engaged in international standards-related activities. (7) International standards-related activity The term 'international standards-related activity' means the negotiation, development, or promulgation of, or any amendment or change to, an international standard, or an international conformity assessment procedure, or both. (8) Member The term 'Member' means a WTO member as defined in section 3501(10) of this title. (9) Private person The term 'private person' means - (A) any individual who is a citizen or national of the United States; and (B) any corporation, partnership, association, or other legal entity organized or existing under the law of any State, whether for profit or not for profit. (10) Product The term 'product' means any natural or manufactured item. (11) Secretary concerned The term 'Secretary concerned' means the Secretary of Commerce with respect to functions under this subchapter relating to nonagricultural products, and the Secretary of Agriculture with respect to functions under this subchapter relating to agricultural products. (12) Trade Representative The term 'Trade Representative' means the United States Trade Representative. (13) Standard The term 'standard' means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines, or characteristics for products or related processes and production methods, with which compliance is not mandatory. Such term may also include or deal exclusively with terminology, symbols, packaging, marking, or labeling requirements as they apply to a product, process, or production method. (14) Standards-related activity. The term 'standards-related activity' means the development, adoption, or application of any standard, technical regulation, or conformity assessment procedure. (15) State. The term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam and any other Commonwealth, territory, or possession of the United States. (16) State agency. The term 'State agency' means any department, agency, or other instrumentality of the government of any State or of any political subdivision of any State. (17) Technical regulation. The term 'technical regulation' means a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. Such term may also include or deal exclusively with terminology, symbols, packaging, marking, or labeling requirements as they apply to a product, process, or production method. (18) United States The term 'United States', when used in a geographical context, means all States.

## **Sec. 2572. Exemptions**

This subchapter does not apply to - (1) any standards activity engaged in by any Federal agency or State agency for the use (including, but not limited to, use with respect to research and development, production, or consumption) of that agency or the use of another such agency; or (2) any standards activity engaged in by any private person solely for use in the production or consumption of products by that person.

## **Sec. 2573. Reports to Congress on operation of agreement**

As soon as practicable after the close of the 3-year period beginning on the date on which this subchapter takes effect, and as soon as practicable after the close of each succeeding 3-year

period through 2001, the Trade Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.